

Remarks

35 U.S.C. §102 rejections

In the papers mailed April 11, 2011 claim 46 and claim 48 were rejected under 35 USC §102(b) as being anticipated by Bielinski. The author of the papers mailed April 11, 2011 has cited the Bielinski document as a reference. The Assignee traverses the rejections for anticipation in several ways. First, by noting that the claim rejections fail under both standards of the Administrative Procedures Act and are therefore moot. Second, by noting that the Office Action has failed to establish a *prima facie* case of anticipation. Furthermore, the claim rejections are moot because claim amendments are believed to have obviated these rejections.

35 U.S.C. § 103 rejections

In the papers mailed April 11, 2011 claim 36, claim 37, claim 38, claim 39, claim 41, claim 42, claim 47, claim 55, claim 58, claim 59, claim 60, claim 76, claim 77, claim 78, claim 79, claim 80, claim 82, claim 83, claim 84, claim 85, claim 86, claim 88, claim 90, claim 91, claim 92, and claim 93 are rejected under 35 USC §103(a) as being unpatentable over Bielinski alone or in view of Baur. The Assignee respectfully traverses the §103(a) rejections of claim 36, claim 37, claim 38, claim 39, claim 41, claim 42, claim 47, claim 55, claim 58, claim 59, claim 60, claim 76, claim 77, claim 78, claim 79, claim 80, claim 82, claim 83, claim 84, claim 85, claim 86, claim 88, claim 90, claim 91, claim 92, and claim 93 in several ways. First, by noting that the assertions regarding the alleged obviousness of the claims are not in compliance with the requirements of the Administrative Procedures Act and are therefore moot. Second, by noting that the cited combination of documents fails to establish a *prima facie* case of obviousness. The papers mailed April 11, 2011 fails to establish the required *prima facie* case of obviousness in a number of ways, including: by: citing combinations of documents that teach away from the claimed invention, citing a combination of documents that fails to teach one or more limitation for every claim, failing to explain the combination as required by *KSR v Teleflex*, teaching a combination that requires a change in principle of operation of the disclosed inventions and teaching a combination that would destroy the ability of one or more of the inventions to function. Furthermore, the claim rejections are moot because claim amendments are believed to have obviated these rejections.

35 U.S.C. §112 first paragraph rejections

In the papers mailed April 11, 2011 claim 36, claim 37, claim 38, claim 39, claim 41 and claim 42 are rejected under 35 USC §112 first paragraph for allegedly not describing a physical object

or substance. The Assignee traverses the §112 first paragraph rejection of claim 36, claim 37, claim 38, claim 39, claim 41 and claim 42. First, by noting that the assertions regarding the alleged lack of written description are not in compliance with the both standards of the Administrative Procedures Act and are therefore moot. Second, by noting that the papers mailed April 11, 2011 have failed to establish a *prima facie* case that the specification does not meet the requirements of §112 first paragraph. In particular, the author of said papers has failed to note that "*there is no requirement that the words in the claim must match those used in the specification disclosure*" and that the use of words in a claim that do not match those used in the specification does not comprise the incorporation of new matter (see *In re Robert Skvorecz*, CAFC 2008-1221). Furthermore, claim amendments have obviated these claim rejections.

35 U.S.C. §112 second paragraph rejections

In the papers mailed April 11, 2011 claim 36, claim 37, claim 38, claim 39, claim 41, claim 42, claim 46 and claim 55 are rejected under 35 U.S.C. §112 second paragraph. The Assignee traverses the §112 second paragraph rejection of claim 36, claim 37, claim 38, claim 39, claim 41, claim 42 in several ways. First, by noting that the assertions regarding the alleged lack of written description are not in compliance with the both standards of the Administrative Procedures Act and are therefore moot. Second, by noting that the papers mailed April 11, 2011 have failed to establish a *prima facie* case that the specification does not meet the requirements of §112 second paragraph. In particular, the Assignee notes that the arguments presented by the author of said papers fail to establish the *prima facie* case required to sustain a §112 second paragraph rejection. Furthermore, claim amendments have obviated these claim rejections.

Statement under 37 CFR 1.111

37 CFR 1.111 requires that the basis for amendments to the claims be pointed out after consideration of the references cited or the objections made. The Assignee notes that this requirement is not relevant to the instant application because, as detailed above, there are no references or objections to avoid. Having said that, the Assignee notes that the primary reasons claims was amended was to correct inadvertent correct clerical errors and to put the claims into final form for allowance and issue.

Reservation of rights

The Assignee hereby explicitly reserves the right to present the modified and/or canceled claims for re-examination in their original format. The cancellation or modification of pending claims to put the instant application in a final form for allowance and issue is not to be construed as a surrender of subject matters covered by the original claims before their cancellation or modification.

Conclusion

The pending claims are of a form and scope for allowance. Prompt notification thereof is respectfully requested.

Respectfully submitted,

Asset Trust, Inc.

/B.J. Bennett/

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